

1 **SPILE, LEFF & GOOR LLP**
2 16501 Ventura Blvd.
3 Suite 610
4 Encino, CA 91436
5 818-784-6899 - Fax 818-784-5899

6 Attorneys for Defendants Podley Associates Realtors and
7 Linda Arlington Seyffert

FILED
Superior Court of California
County of Los Angeles

DEC 04 2017

Sherri R. Carter, Executive Officer/Clerk
By Nancy Alvarez Deputy

8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES -CENTRAL DISTRICT**

11 DANIEL GLAZER, an individual,
12
13 Plaintiff,

14 vs.

15 CHENEY ADIRENNE SHAPIRO; CHENEY
16 SHAPIRO DESIGNS 401K, CHENEY
17 SHAPIRO DESIGNS; RESOURCEFUL
18 DEVELOPMENTS INC.; RICHARD JUDSON
19 WILLIAMS; SILVERWOOD PROPERTY,
20 INC. KENNETH HOWARD SHAPIRO;
21 PODLEY ASSOCIATES REALTORS; LINDA
22 ARLINGTON SEYFFERT; SEISMIC
23 SAFETY, INC.; EDMUND J. SYLVIS; KEN
24 LAMARR COMPTON; AND DOES 1
25 THROUGH 250,

26 Defendants.

Case No.: BC669741

(Action filed 7-25-17)

Assigned for All Purposes to:
Honorable Richard E. Rico, Dept. 17

**DEFENDANT FORWARD STUDIO
CITY INC. dba KELLER WILLIAMS'
NOTICE OF MOTION AND MOTION TO
STRIKE PUNITIVE DAMAGES
AGAINST FORWARD STUDIO CITY
INC. FROM THE FIRST AMENDED
COMPLAINT**

DATE: January 22, 2018
TIME: 8:30 a.m.
DEPT: 17

RESERVATION NO. 171020260507

27 TO ALL PARTIES HEREIN THROUGH THEIR COUNSEL OF RECORD:

28 PLEASE TAKE NOTICE that on January 22, 2018, at 8:30 a.m. or as soon
thereafter as the matter may be heard, in Department 17, of the above-entitled court,
located at 111 North Hill Street, Los Angeles, CA, Defendant Podley Associates
Realtors ("Podley") and Linda Arlington Seyffert (referred to as "Seyffert" and

1 collectively as "PODLEY"), will present PODLEY's Motion to Strike punitive damages
2 from the First Amended Complaint (herein "FAC") of Plaintiff DANIEL GLAZER
3 (referred to herein as "Plaintiff").

4 The Cause of Action asserted against PODLEY that alleged punitive damages is
5 the Ninth Cause of Action for "Breach Fiduciary Duty." PODLEY seeks to strike punitive
6 damages against PODLEY, without leave to amend, at p. 27, ¶ 117, line 12 and the
7 Prayer, at p. 36, ¶ 4, line 8, because the FAC has no allegations that Podley agent
8 Seyffert committed an intentional act.

9 Even if Plaintiff had plead an intentional act against Seyffert, the actual standard
10 for punitive damages is more than intentional misconduct: "Despicable conduct used in
11 its ordinary sense, the adjective 'despicable' is a powerful term that refers to
12 circumstances that are 'base,' 'vile,' or 'contemptible' that is required, pursuant to Civil
13 Code § 3294(c) (1). College Hospital, Inc. v. Superior Court (1994) 8 Cal.4th 704, 725.
14 As held in American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton (2002) 96 Cal
15 App. 4th 1017, 1050—"Despicable conduct" has been described as conduct which is ...
16 so vile, base, contemptible, miserable, wretched or loathsome that it would be looked
17 down upon and despised by ordinary decent people. Such conduct has been described
18 as [having] the character of outrage frequently associated with crime."

19 Podley Associates Realtors has a second independent basis to strike punitives
20 as there is no evidence of corporate ratification of Seyffert's alleged intentional act.

21 PODLEY's Motion to Strike, should be sustained, without leave to amend, based
22 upon the Memorandum of Points and Authorities, the FAC and upon such oral
23 argument as is presented at the hearing.

24 Dated: December 1, 2017

Respectfully submitted,

25 **SPILE, LEEF & GOOR LLP**

26 By: 

27 ANDREW L. LEEF
28 Attorneys for Defendants Podley
Associates Realtors and Linda Seyffert

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1 allowed to respond to a pleading, may serve and file a notice of motion to strike the whole
2 or any part thereof."

3 Code of Civil Procedure § 436 provides as follows:

4 "The court may, upon a motion made pursuant to Section 435 or at any time in its
5 discretion, and upon terms it deems proper:

6 (a) Strike out any irrelevant, false, or improper matter inserted in any pleading.

7 (b) Strike out all or any part of any pleading not **drawn or filed in conformity**
8 **with the laws of this state**, a court rule, or an order of the court."

9
10 **3. PUNITIVE DAMAGES ARE UNWARRANTED**

11 Despite all of Plaintiff's contentions there is no allegation of actual intentional
12 wrongdoing by PODLEY. Therefore, punitive damages should be stricken against
13 PODLEY.

14 The adequacy of a FAC's punitive damage allegations is tested by a motion to
15 strike. Grieves v. Superior Court (1984) 157 Cal.App.3d 159,164. As held in Hilliard v. A.
16 H. Robins Co. (1983) 148 Cal.App.3d 374,391-392:

17 "There is no cause of action for punitive damages. Punitive or exemplary
18 damages are remedies available to a party who can plead and prove the facts and
19 circumstances set forth in Civil Code section 3294, the cases interpreting this code
20 section, or by other statutory authority. Punitive damages are merely incident to a
21 cause of action, and can never constitute the basis thereof. The concurrence of
22 both an actionable wrong and damages are necessary elements for a cause of
23 action. Exemplary damages, where recoverable, are deemed to be ... mere
24 incidents to the cause of action and ... [not] the basis thereof."

25 No facts are alleged by the Plaintiff, which demonstrate an entitlement to punitive
26 damages from PODLEY.

27 Courts have long held that a party seeking punitive damages must plead specific
28 facts to support such a claim. G. D. Searle & Co. v. Superior Court (1975) 49 Cal.

1 App.3d 22; 29; Brousseau v. Jarrett (1977) 73 Cal. App.3d 864,872; and Smith v.
2 Superior Court (1992) 1019 Cal. App. 4th 1033, 1041-1042:

3 "A claim for punitive damages cannot be pleaded generally, i.e., allegations that
4 defendants acted with oppression, fraud or malice toward plaintiff are merely legal
5 conclusions. Likewise, 'despicable conduct' is a conclusion. Specific factual
6 allegations are required to support a punitive claim. [Citations.] (Weil & Brown,
7 California Practice Guide: Civil Procedure Before Trial, 6: 158 (The Rutter Group,
8 1996))."

9 The Plaintiff has not claimed - or offered any allegations - that PODLEY defrauded
10 her or that PODLEY "intended ... to cause injury to the plaintiff" (Civil Code § 3294(c)(1)).
11 In order to state a basis for an award of punitive damages, a plaintiff has to allege
12 sufficient facts to establish that defendant engaged in "despicable conduct ... with a willful
13 and conscious disregard of the rights or safety of others" (Civil Code § 3294(c)(1),
14 defining "malice"), or that it engaged in "despicable conduct that subjects a person to
15 cruel and unjust hardship in conscious disregard of that person's rights." (Civil Code §
16 3294(c)(2), defining "oppression".) Both options require that a plaintiff allege sufficient
17 specific facts to establish that the defendant engaged in "despicable conduct".

18 'The "malice" for punitive damages purposes requires proof by clear and
19 convincing evidence that defendant's tortious wrong amounted to "despicable conduct"
20 and that such despicable conduct was carried on with a "willful and conscious disregard"
21 of the rights or safety of others. Civil Code § 3294(c) (1) "Despicable conduct used in its
22 ordinary sense, the adjective 'despicable' is a powerful term that refers to circumstances
23 that are 'base,' 'vile,' or 'contemptible.'" College Hospital, Inc. v. Superior Court (1994) 8
24 Cal.4th 704, 725.

25 As held in American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton (2002)
26 96 Cal App. 4th 1017, 1050—"Despicable conduct" has been described as conduct which
27 is ... so vile, base, contemptible, miserable, wretched or loathsome that it would be looked
28 down upon and despised by ordinary decent people. Such conduct has been described

1 as [having] the character of outrage frequently associated with crime."

2 Seyffert's alleged breaches of fiduciary duty, set forth, at pp. 25-26, in ¶ 114, are
3 not alleged to be intentional let alone amount to the misconduct of a character of outrage
4 frequently associated with crime. Therefore, there is no question here that Plaintiff's
5 FAC, does not even allege any of the foregoing type of conduct, so the Plaintiff has failed
6 to satisfy the stringent pleading requirements for an award of punitive damages. All
7 references to punitive damages should be stricken, without leave to amend against
8 PODLEY.

9
10 **4. AGAINST PODLEY ASSOCIATES REALTORS THE REQUISITE**
11 **RATIFICATION IS ABSENT SO PUNITIVE DAMAGES SHOULD BE STRICKEN**

12 Ratification is not alleged against Podley. In the FAC, ¶ 15, the Plaintiff admits
13 that Podley Associates Realtors is a corporation. When seeking punitive damages
14 against a corporation, the advanced knowledge, conscious disregard, authorization,
15 ratification or act of oppression, fraud or malice must be on the part of an officer, director,
16 or managing agent of the corporation. Civil Code § 3294(b); Scannell v. County of
17 Riverside (1984) 152 Cal. App.3d 596, 614.

18 Corporate ratification in the punitive damages context requires "actual knowledge
19 of the conduct and its outrageous nature" and for purposes of determining corporate
20 liability for punitive damages, "a corporation cannot ratify that which it does not actually
21 know about." College Hospital, Inc. v. Superior Court (1994) 8 Cal.4th 704, 726; Cruz v.
22 HomeBase (2000) 83 Cal. App.4th 160, 168.

23 In Egan v. Mutual of Omaha Ins. Co., (1979) 24 Cal.3d 809, the Court held that for
24 Mutual to be liable the agent had to be "unfit and the principal was reckless in employing
25 him," or "the agent was employed in a managerial capacity and was acting in the scope of
26 employment," or "the principal or a managerial agent of the principal ratified or approved
27 the act." p. 822. In Egan, the plaintiff identified the managerial employees as "McEachen
28 and Segal" and identified what they did to constitute corporate ratification.

1 Herein, a managerial agent of KW is not identified in the SAC let alone an
2 indication of what conduct of the managerial agent constituted ratification.

3 Moreover, in College Hospital, Inc. v. Superior Court (1994) 8 Cal.4th 704, the
4 plaintiff in that case named the officer of the corporate hospital (Westbrook) and set forth
5 specific facts against Westbrook, but punitive damages against the corporate hospital
6 were disallowed:

7 "In the fall of 1990, **Westbrook, the chief administrator of the Hospital**, heard
8 'third hand' that a relationship might have developed between Laura and
9 Berry-something more than just a patient passing an individual in the hallway. **The**
10 **information was given to Westbrook by an assistant administrator**, who
11 apparently attributed it to members of Laura's treatment team. Westbrook
12 promptly confronted Berry with the rumor. Berry seemed shocked by the
13 information and adamantly denied any personal contact with Laura. Westbrook
14 advised Berry that the organization expected 'certain behavior' of its managers
15 and that anything other than a casual relationship with a patient 'might be
16 perceived' as 'questionable.' Westbrook took no further action in the matter.

17
18 Plaintiffs argue that punitive damages are appropriate against the Hospital under
19 Civil Code section 3294, subdivision (b) **because Westbrook personally**
20 **exhibited malice towards plaintiffs in performing his managerial duties**. They
21 imply that any personal contact between a therapy patient and a hospital
22 employee is presumptively harmful and that Westbrook's acceptance of Berry's
23 denial without further investigation was inherently malicious." (pp. 724-726).

24 **The Court held that Westbrook's conduct could not be characterized as**
25 **ratification, as there was no indication that Westbrook had personal knowledge.**
26 Id., pp. 726-727.

27 The FAC is devoid of facts establishing any of these elements. Unlike, in College
28 Hospital, the FAC fails to allege even which corporate officer at Podley knew that its real

1 estate agent Seyffert, was allegedly committing an intentional act, let alone that said
2 unnamed corporate officer ratified her intentional misconduct. As set forth above,
3 intentional misconduct is not even alleged against Seyffert.
4

5 **5. CONCLUSION**

6 The references in the FAC to punitive damages against PODLEY, should
7 be stricken, without leave to amend, from the Ninth Cause of Action for "Breach Fiduciary
8 Duty" at p. 27, ¶ 117, line 12 and the Prayer, at p. 36, ¶ 4, line 8.
9

10 Dated: December 1, 2017

Respectfully submitted,

11 **SPILE, LEFF & GOOR LLP**

12
13 By:


14 ANDREW L. LEFF
15 Attorneys for Defendants Podley
16 Associates Realtors and Linda Seyffert
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12/01/2017

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3)§
4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action. My present business address is 16501 Ventura Boulevard,
7 Suite 610, Encino, California 91436.

8 On December 1, 2017, I served a true and correct copy of the document described as
9 **DEFENDANT FORWARD STUDIO CITY INC. dba KELLER WILLIAMS'**
10 **NOTICE OF MOTION AND MOTION TO STRIKE PUNITIVE DAMAGES AGAINST**
11 **FORWARD STUDIO CITY INC. FROM THE FIRST AMENDED COMPLAINT** on the
12 interested parties, as follows:

13 SEE ATTACHED SERVICE LIST

14 BY HAND DELIVERY

15 By Third Party, Ace Messenger and Attorney Service, Inc.

16 BY FACSIMILE TRANSMISSION: By use of facsimile machine telephone number
17 (818) 784-0176, in accordance with Code of Civil Procedure §1013(e) and California
18 Rules of Court 20008(e), to the within parties at the facsimile number(s) indicated. This
19 transmission was reported as complete and without error, and a copy of the transmission
20 report which was issued by the transmitting facsimile machine is attached to the original
21 hereof.

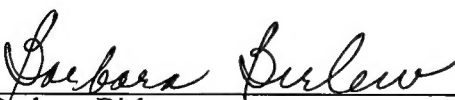
22 ☒ BY UNITED STATES POSTAL SERVICE: I am "readily familiar" with the firm's
23 practice of collection and processing correspondence for mailing. Under that practice it
24 would be deposited with the United States Postal Service on that same day with postage
25 thereon fully prepaid at Los Angeles, California in the ordinary course of business.

26 BY NEXT DAY BUSINESS DELIVERY: I am "readily familiar" with the firm's
27 practice of collection and processing documents for delivery via Federal Express
28 Overnight Mail. Under that practice it would be deposited in the Federal Express Service
drop-off box on that same day prior to the 5:00 p.m. pick-up time for delivery the next
business day in the ordinary course of business.

BY E-MAIL ELECTRONIC: from our firm's Microsoft Outlook e-mail system for
delivery to the above e-mail addresses, read receipt requested.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.

Executed on December 1, 2017 at Encino, California.

25 
26 Barbara Birlew

SERVICE LIST
Glazer v. Cheney Adrienne Shapiro, et al.

Ronald A. Hartmann, Esq.
Kurt E. Kananen, Esq.
Hartmann & Kananen
5743 Corsa Avenue, Suite 119
Westlake Village, CA 91362
Telephone: (818) 710-0151
Facsimile: (818) 710-0191
Email: **constructiondefects@sbcglobal.net**
Attorneys for Plaintiff

Warren K. Miller, Esq.
Carlson Law Group
21031 Ventura Blvd., Suite 1100
Woodland Hills, CA 91364
Telephone: (818) 996-7800
Facsimile: (818) 884-4285
Email: **wkm@carlsonlawgroup.com**
Attorneys for Silverwood Properties, Inc.
and Kenneth Howard Shapiro

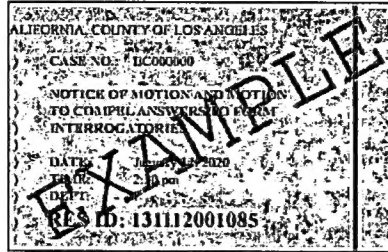
Jeffrey M. Lenkov, Esq.
Manning & Kass Ellrod Ramirez, LLP
801 S. Figueroa Street, 15th Floor
Los Angeles, CA 90017
Telephone: (213) 624-6900
Facsimile: (213) 624-6999
Email: **jml@manningllp.com**
Attorneys for Defendants Ken L. Compton; Edmund J. Sylvis; Seismic Safety

Alisa E. Sandoval, Esq.
Richardson, Harman & Ober, PC
234 E. Colorado Blvd., Suite 800
Pasadena, CA 91101
Email: **asandoval@rhopc.com**
Telephone: (626) 449-5577
Facsimile: (626) 449-5572
Attorneys for Defendants Cheney A. Shapiro; Cheney Shapiro Designs; Cheney Shapiro, trustee
of Cheney Shapiro Designs 401K; Cheney Shapiro Designs 401K; Richard J. Williams;
Resourceful Developments, Inc.

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INSTRUCTIONS

Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.



RESERVATION INFORMATION

Reservation ID: 171020260507
Transaction Date: October 20, 2017
Case Number: BC669741
Case Title: DAVID A GLAZER VS CHENEY ADRIENNE SHAPIRO ET AL
Party: PODLEY ASSOCIATES REALTORS (Defendant/Respondent)
Courthouse: Stanley Mosk Courthouse
Department: 17
Reservation Type: Motion to Strike (not anti-SLAPP) - without Demurrer
Date: 1/22/2018
Time: 08:30 am

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: (See below)

Description	Fee
First Paper (Unlimited Civil)	\$435.00
Total Fees:	Receipt Number: 1171020K5374 \$435.00

PAYMENT INFORMATION

Name on Credit Card: Steve Spile
Credit Card Number: XXXX-XXXX-XXXX-4410

A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING
MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE
MOTION/DOCUMENT FACE PAGE.

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